**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 5356 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE DN PATEL**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**NANDADEVI DINESHKUMAR SHARMA - Petitioner(s)**
**Versus**
**CHIEF CONTROLLING REVENUE AUTHORITY & 2 - Respondent(s)**

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**Appearance :**
MR NEHAL R JOSHI for Petitioner(s) : 1,
MR KL PANDYA, AGP for Respondent(s) : 1 - 3.

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**CORAM : HONOURABLE MR.JUSTICE DN PATEL**

**Date : 20/06/2006**

**CAV JUDGMENT**

This petition has been preferred against the order dated 22nd December,2005 passed by the Deputy

Collector, Stamp Duty Valuation, Ahmedabad (Annexure “C” to the memo of the petition) as well as against the order dated 14th February,2005 passed by respondent no.2 - Collector of Stamps, (Annexure "A" to the memo of the petition).

2. Learned advocate for the petitioner submitted that the order dated 22nd December,2005 passed by Deputy Collector, Stamp Duty Valuation, Ahmedabad is patently dehors the provisions of the Bombay Stamp (Determination of Market Value of property) Rules,1984 (hereinafter referred to as “the Rules,1984”). No opportunity of hearing has ever been given to the petitioner and ex-parte order has been passed as well as the order is a non-speaking order. The so called “Jantri”, upon which the reliance has been placed by the Deputy Collector, Stamp Duty Valuation, Ahmedabad has never been supplied to the petitioner. Moreover, the document i.e. Conveyance deed was registered on 3rd August,1994 at the office of Sub-Registrar, Odhav vide registration No.1279, whereas the so called Notice is alleged to have been given in the year 2004. Thus, it is beyond the period of 6 years and, therefore, as per section 32A(4) of The Bombay Stamp Act,1958 (hereinafter referred to as “the Act,1958”), the respondent has no power, jurisdiction and authority to

issue such type of Notice and, hence, the impugned order deserves to be quashed and set aside. In fact, after approximately 10 years of the date of registration of the document, the alleged Notice appear to have been given. The petitioner has purchased the land for Rs.7,00,000/-, whereas the respondent has fixed the market price of the land in question at Rs.14,00,000/-. Thus, excessively exorbitant fixation of price and that too, without giving any opportunity of being heard to the petitioner, by passing a cyclostyled non-speaking order, relying upon a Jantri (copy whereof was never supplied to the petitioner) is palpably arbitrary usage of power and, hence, the impugned order dated 14th February,2005 (Annexure “A” to the memo of the petition) deserves to be quashed and set aside and consequently, the order, which is at Annexure "C" also deserve to be quashed and set aside. The respondent no.3 has not given any basis for fixation of market value, which is approximately double market value than what is referred in the conveyance deed.

3. Learned Assistant Government Pleader Mr.K.L.Pandya for the respondents submitted that the order passed by the Deputy Collector, Stamp Duty Valuation,Ahmedabad is true, correct and in consonance

with the facts of the present case. The market value of the land in question arrived at Rs.14,00,000/- has been fixed by respondent authority as per “Jantri”. No Appeal has been preferred against the said order and, therefore, Notice at “C” has been issued and, so this Court may not interfere with the orders, which are at Annexure "A" and Annexure “C” to the memo of the petition.

4. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, in my opinion, order dated 22nd December,2005 passed by respondent No.3 – Deputy Collector, Stamp Duty Valuation, Ahmedabad (Annexure “A” to the memo of the petition) and consequently the Notice dated 22nd December,2005 (Annexure "C" to the memo of the petition) deserve to be quashed and set aside, mainly for the following facts and reasons:-

(i) The impugned order dated 22nd December,2005 passed by Deputy Collector, Stamp Duty Valuation, Ahmedabad (Annexure “C” to the memo of the petition) reflects no reason for fixing the market value of the impugned land at Rs.14,00,000/-. The petitioner has purchased the land in question for consideration of Rs.7,00,000/-. The document was registered on 3rd

August,1994 before the office of Sub-Registrar, Odhav vide registration no.1279. No basis has been supplied by the Deputy Collector for fixing such a high value of the land in question. The order dated 22nd December,2005 assigns no reasons, no basis, no calculation for arriving at the market value of the land in question. The figure of the market value of the land in question cannot come in the mind of the respondent no.3 i.e. Deputy Collector, Stamp Duty Valuation, Ahmedabad from heaven or sky. There must be some basis. No such basis or calculation has been given for arriving at approximately double market valuation than what is referred in the Deed of Conveyance. Only 'one line reasoning' has been referred to the effect that as per “Jantri”, the price is fixed at Rs.14,00,000/-. By no stretch of imagination, this can be said to be a reasoned order. Burden of proof is upon respondent. “Burden of proof lies upon him who affirms; and not upon him, who denies”. It is the say of respondent authority that deed of conveyance is revealing lesser market value. It is the respondent, who is fixing higher market value. Therefore respondent no.3 has to justify their fixation of higher market value. Respondents cannot throw their burden, upon petitioner. Such type of reasoning tantamounts to arbitrariness. Arbitrariness and equality are sworn enemies of each

other. When arbitrariness is present, equality is always absent and where, equality is present, arbitrariness is always absent. Looking to the nature of order dated 14th February,2005, no reasons have been assigned worth the name for arriving at the market value of the land in question. It is the duty of the Deputy Collector, Stamp Duty Valuation, Ahmedabad to justify such a higher market value because it is their say that the market value of the land in question is at Rs.14,00,000/-. Thus, the impugned order at Annexure "A" is a non-speaking order.

(ii) In a cyclostyled format, the impugned order has been passed, wherein some gaps have been filled in and one and two sentences have been added. Such type of orders are violative of principle of natural justice. This Court has time and again delivered judgments and has quashed and set aside, stereotyped orders passed by respondent No.3. Learned advocate for the petitioner has also relied upon the judgment dated 11th August,2003 delivered by this Court in **Special Civil Application No.4434 of 2003** and also a decision dated 3rd April,2002 rendered by this Court in the case of **Pradhyumanbhai Mohanlal Patel V/s. State of Gujarat** reported in **2003(1) GLR 454**. Learned advocate for the petitioner has also

relied upon the judgment dated 22nd February,2005 delivered by Division Bench of this Court in **Letters Patent Appeal No.109 of 2005 in Special Civil Application No.16787 of 2004** as well as the order dated 10th October,2005 passed by this Court in **Special Civil Application No.13729 of 2005 along with other group of matters** and judgement dated 5th December,2001 passed by this Court **(Coram: Hon'ble Mr.Justice R.R.Tripathi) in Special Civil Application No.654 of 2000 with Special Civil Application No.2794 of 2001** in the case of **Ambuja Metal Industries Pvt.Ltd. V/s. State of Gujarat** and has pointed out that the order dated 22nd December,2005 passed by respondent No.3 (Annexure “C” to the memo of the petition) deserves to be quashed and set aside. Looking to the impugned order and comparing it with the facts of the present case, I am also of the opinion that the impugned order is a non-speaking order since no reasons have been assigned for fixing the market value at Rs.14,00,000/-. The order dated 14th February,2005 (at Annexure “A” to the memo of the petition) is a cyclostyled order, in which blanks have been filled in. No reasons have been assigned for filling up those blanks.

(iii) As per the Bombay Stamp (Determination of Market

Value of property) Rules,1984, it is the duty of the Collector to provide the basis, on which, the true market value of the property and proper duty payable thereon has been provisionally determined by him. Rule 4 of the Rules,1984, reads as under:-

> **"4. Procedure to be followed by the Collector for determining the true market value of the property which is the subject matter of the instrument:-**
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> "4(i) on receipt of the instrument under sub-section (3) of Section 31 or sub-section (1) of section 31-A, the Collector of the District, where the thinks fit to do so, may for the purpose of his inquiry:-
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> (a) call for any information or record having bearing, on the question before him from any public office, officer or authority under the Central Government, State Government or any local authority;
>
> (b) examine and record statement from any member of the public officer or the authority under the Central Government or State Government or any local authority, and
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> (c) inspect or empower any officer under him to inspect the property after due notice to the parties concerned.
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> (2) <u>After examining the said information, records and evidence, if any, before him Collector of the District shall issue a notice showing the basis on which true market value of property and proper duty payable thereon has been provisionally determined by him,</u> to every person to whom according to the provisions of Section 30 is liable to pay stamp duty in respect of such

instrument requiring such person to submit within 15 days from the date of the service of the notice upon such person, his representation in writing along with all the evidence in support of such representation.

(3) The Collector of the District shall after considering the representation, if any, received by him under sub-rule (2) pass an order determining the true market value and the proper payable on the instrument." (emphasis supplied)

In view of the aforesaid provision, the basis for arriving at the market value ought to have been pointed out to the petitioner. Similarly, it is also the duty of the Collector to pass an order determining the true market value and proper duty payable on the instrument. Looking to the facts of the present case, no such basis has been provided for arriving at the market value nor there is any reflection of the basis of the market value fixed by the Collector in the impugned order dated 14th February,2005. Reasons always reflect the application of mind by the lower authority. "Reason" is the soul of the order. If the order is without reasons, the appellate authority cannot appreciate the order passed by the lower authority. Reason keeps arbitrariness away.

(iv) The document for the land in question was registered before the office of Sub-Registrar, Odhav on

3rd August,1994 vide reregistration No.1279. It appears from the fact of the case that the alleged Notice has been given on 12th October,2004. This is violative of sub-section (4) of section 32A of the Bombay Stamp Act,1958. Sub-section (4) of section 32A of the Bombay Stamp Act,1958, reads as under:-

> *32A(4) The Collector of the district may, suo motu or on receipt of information from any source, within six years from the date of registration of any instrument referred to in sub-section(1), (not being the instrument upon which an endorsement has been made under section 32 or the instrument in respect of which the proper duty has been determined by him under sub-section (3) or an instrument executed before the date of the commencement of the Bombay Stamp (Gujarat Amendment) Act,1982) (Guj.21 of 1982) call for examine the instrument for the purpose of satisfying himself as to the correctness of the consideration or of the market value of the property which is the subject matter of such instrument and the duty payable thereon; and if on such examination, he has reason to believe that the consideration does not approximate to the market value of such property or, as the case may be, market value of such property has not been truly and fully set forth in the instrument, he shall proceed as provided in sub-sections (2) and (3).*

It appears from the facts of the case that at a much belated stage and beyond the period of limitation, as per sub-section (4) of section 32A of the Act,1958, the alleged Notice has been issued on 12th October,2004

(v) The only basis referred for issuance of the notice was “Jantri”. As per this “Jantri”, the price of the disputed land has been fixed by the Deputy Collector at Rs.14,00,000/-, against the sale consideration of Rs.7,00,000/- as per conveyance deed. Thus, approximately double market valuation has been proposed by the Deputy Collector, Stamp Duty Valuation, Ahmedabad vide impugned notice dated 12th October,2004. In fact, as refereed hereianbove, there are separate Rules, knows as “Bombay Stamp (Determination of Market Value of property) Rules,1984”, which prescribes, (as per Rule 4), the procedure of determination of the true market value. Rule 8 prescribes, the principles, to be taken into consideration for determination of market value. The price fixation ought to be based upon principles referred in Rule 8 of the Rules,1984. Rule 8 of Rules,1984, reads as under:-

> **8. Principles to be taken into consideration for determination of market value:** The Collector of the District shall while determining the true market value of a property which is the subject matter of an instrument take into consideration primarily the capitalized value of the property i.e. the amount of money whose annual interest at the highest prevailing interest at any given time is its net annual income, and also the following factors, namely:-
>
> (a) in the case of agricultural land, --
> (i) classification of land under the

provisions of the Bombay Land Revenue Code,1879;

(ii) the rate of the land revenue;

(iii) the nature of crops raised on the land;

(iv) average yeild from the land, its nearness to road and market its distance from village site road to land, facilities available for irrigation and also for transport of procedure of such land;

(v) value of adjacent land or land in vicinity;

(vi) any factors mentioned in the instrument which is relevant for the purpose of determination of true market value;

(vii) any other factor which the Collector of the District thinks to have a bearing on the valuation of the land;

(b) in the case of non-agricultural land,--

(i) the general value of non-agricultural land in the vicinity;

(ii) facilities such as road, railway station, bus route, shops, market and the like available in the vicinity of the land;

(iii) amenities like public offices, hospitals and educational institutions available in the vicinity of the land;

(iv) development activities including, Development of industries in the vicinity of the land;

(v) any factors mentioned in the instrument which is relevant for the purpose of determination of true market value;

(vi) any other factor which the Collector of the District thinks, to have a bearing on the valuation of the non-agricultural land;

(c) in the case of buildings,--

(i) the area of construction;

(ii) the floor space index;

(iii) type and structure;

(iv) year of construction;

(v) kind of material used;

(vi) locality in which constructed;

(vii) rate of depreciation;

(viii) any factors mentioned in the instrument which is relevant for the

purpose of determination of true market value;

(ix) any other factor which the Collector of the District thinks to have a bearing on the valuation of the building;

(d) in the case of any other property,--

(i) the nature and condition of the property;

(ii) purpose for which the property is being put to use;

(iii) any factors mentioned in the instrument which is relevant for the purpose of determination of true market value;

(iv) any other factor which the Collector of the District thinks to have a bearing on the valuation of the property.

It appears from the facts of the case that no procedure has been followed by the Deputy Collector for fixing the market value as per the Rules,1984. The so called “Jantri” referred in the notice as well as in the order dated 22nd December,2005 (Annexure “C” to the memo of the petition), has never been supplied to the petitioner. The respondent authority has also to bear in mind that whenever they are relying upon any document, the copy thereof ought to be supplied to the petitioner. Otherwise, the petitioner cannot know what is to be replied. The Deputy Collector, Stamp Duty Valuation, Ahmedabad has put sole reliance upon the “Jantri“, which gives the market price of the land in question. This document cannot be kept secret by the respondent authority. “Jantri” reflects probable market price of the

land in question, but it is not a conclusive evidence. Every citizen or the petitioner has a right to know what is referred in the said “Jantri”. There is no presumption that what is referred in “Jantri” is true and correct. It is the duty of respondent authority to justify that the market value of the land referred in “Jantri”, reflects correct market value, in consonance with the provisions of the Act,1958 and with the Rules,1984 (especially with Rule 4 read with Rule 8). It is a consistent complaint by the petitioner that the respondent authorities always rely upon the “Jantri”, but they never supply the copy thereof to the citizens. There are several matters, in which, “Jantri” is referred, but the copy whereof was not given to the petitioner. The document - “Jantri” is not a secret document under the Official Secret Act. I hereby direct the respondent authority to supply a copy of the relevant part of the “Jantri”, henceforth, to the person, to whom, the notice has been issued, under the Bombay Stamp Act,1958, whenever “Jantri” is relied upon by the respondent authority.

5. As a cumulative effect of the aforesaid facts and circumstances of the case and looking to the judicial pronouncements, referred hereinabove, the order dated

22nd December,2005 passed by the Deputy Collector, Stamp Duty Valuation, Ahmedabad is hereby quashed and set aside (Annexure “C” to the memo of the petition) and consequently, the order dated 14th February,2005 passed by the Collector of Stamp (Annexure "A" to the memo of the petition) is also quashed and set aside. Rule made absolute to the aforesaid extent with no order as to costs.

**(D.N.PATEL,J)**

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